Please amend the claim as follows:

1. (Amended) An aqueous solution [that prevents the formation of rust, corrosion and scale on metal surfaces that are exposed to it]comprising:

potassium sorbate dissolved in tap water or deionized water at a concentration of 0.3 %, by weight, or higher, the aqueous solution having a pH of 4.5 or higher;

providing a solution that has lower electrical conductivity and lower oxygen content than tap water such that when the solution is exposed to a metal surface the metal surface will remain free of rust, corrosion and scale.

REMARKS

Claim 1 is hereby amended to recite, in functional language, what the solution, the ingredients of which are set forth in claim 1 in specific structural language, does. The following appears in the MPEP 2173.05(g):

> There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. In re Swinehart, 439 F.2d 210, 169 USPQ (CCPA 1971).
> A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the contest in which it is used.

The Examiner states in the Final Action, in the Response to Arguments section the following:

> The Examiner notes that Applicants' preamble recites the solution as being able to "prevent the formation of rust, corrosion, and scale on metal surfaces that are exposed to it:; however, this recitation is not given any patentable weight."

As a result of the amendment to claim 1, this claim now contains functional terms defining Applicant's invention. In accordance with the above section of the MPEP, functional statement such as this **must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used.**

The Court of Appeals for the Federal Circuit has held that no limitation or wording anywhere in the claim can be ignored in determining patentability. In re Stencel, 828 F.2d 751 (Fed. Cir. 1987

Claim 1 as now presented not only contains a functional statement of what the solution does it also contains specific structural language defining the ingredients of the solution. Furthermore, this application contains a DECLARATION UNDER 37 CFR 1.132 in which clear and convincing evidence has been presented of the unexpected results of this invention.

It is submitted that this proposed amendment to claim 1 merely presents claim 1 in a different form and thus, this proposed amendment will not require an additional search. For this reason Applicant request that this amendment after Final Rejection be entered and this application allowed.

It should be noted that the non elected claims 3-5 are hereby cancelled. A divisional application, Serial No. 09/751,648, was filed on December 29, 2000 in which the method claims of this invention will be prosecuted.

Thus, Applicant maintains that his invention as set forth in claims 1 and 2 is not disclosed or taught in the prior art references U.S. Patent No. 5,965,549 to Puraar et al. The Applicant therefore requests reconsideration and allowance of this application.

Respectfully submitted,

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APPENDIX

1. (Amended) An aqueous solution [that prevents the formation of rust, corrosion and scale on metal surfaces that are exposed to it]comprising:

potassium sorbate dissolved in tap water or deionized water at a concentration of 0.3 %, by weight, or higher, the aqueous solution having a pH of 4.5 or higher; providing a solution that has lower electrical conductivity and lower oxygen content than tap water such that when the solution is exposed to a metal surface the metal surface will remain free of rust, corrosion and scale.